United States Department of Labor
Employees' Compensation Appeals Board

D.F., Appellant	)	
and	)	**Docket No. 22-0904**
	)	**Issued: October 31, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 27, 2022 appellant, through counsel, filed a timely appeal from a March 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a neck or back condition causally related to the accepted December 3, 2020 employment incident.

FACTUAL HISTORY

On December 4, 2020 appellant, then a 32-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2020 she sustained a whiplash, injury to her neck and back, when her postal vehicle was stuck by another vehicle while in the performance of duty. She stopped work on the date of injury.

In a duty status report (Form CA-17) dated December 10, 2020, Dr. Martin Gillman, a chiropractor, noted reduced range of motion throughout appellant's spine following a motor vehicle accident (MVA) on December 3, 2020. He advised that she was not capable of returning to work.

A Form CA-17 dated December 12, 2020, bearing an illegible signature, indicated that appellant remained unable to work due to neck and back injuries.

In a December 17, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP thereafter received hospital records dated December 3, 2020 by Irina Khaitov, a physician assistant, who noted that appellant related complaints of neck and back pain after she was "T-boned" on the passenger side while making a left turn. Ms. Khaitov diagnosed neck and back pain.

A report of computerized tomography (CT) scan of the cervical spine dated December 3, 2020 was negative for acute fracture or dislocation.

In a medical report dated December 7, 2020, Dr. Yong Chi, a physiatrist, noted that appellant related complaints of neck, back, buttock, and shoulder pain, which she attributed to an MVA on December 3, 2020. He performed a physical examination, which revealed positive shoulder depression, shoulder impingement, and Spurling's tests, tenderness and reduce range of motion of the neck, trapezius, shoulders, and thoracic spine, reduced strength of the deltoids, and reduced sensation on the left in the C5, C6, and C7 dermatomes. Dr. Chi obtained x-rays of the cervical, thoracic, and lumbar spines, which revealed degenerative disease. He diagnosed pain, sprain, and strains of the neck, upper and middle back, and shoulders.

Appellant received chiropractic treatments with Dr. Gillman and Dr. Leonard Luna, also a chiropractor, who diagnosed segmental dysfunction and myalgia of the cervical, thoracic, and lumbar spine, cervical and lumbar disc syndrome, and cervical radiculitis. They also completed Forms CA-17, which recommended that she remain out of work.

A report of ultrasound of both shoulders dated December 8, 2020 did not identify a source of appellant's pain.

In a report of nerve conduction velocity (NCV) studies dated December 21, 2020, Dr. Chi indicated that there was no evidence of peripheral neuropathy of the left and right median and ulnar nerves. In a report of electromyography (EMG) dated December 24, 2020, he noted evidence of left C5-6 radiculopathy and bilateral median motor neuropathy and right ulnar sensory neuropathy.

In a report of somatosensory evoked potential and posterior tibial nerve stimulation dated January 6, 2021, Dr. Louis Guillaume, an orthopedist, indicated that appellant's findings were within normal limits.

In a report of EMG/NCV studies of the lower extremities dated January 7, 2021, Dr. Chi noted bilateral tibial and right peroneal motor neuropathy and left L4-5 and bilateral L5-S1 radiculopathy.

By decision dated January 22, 2021, OWCP accepted that the December 3, 2020 employment incident occurred. However, it denied appellant's traumatic injury claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the injury and/or events. Consequently, OWCP found that she had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a report of magnetic resonance imaging (MRI) scan of the cervical spine dated December 14, 2020, which revealed disc bulges at C5-6 and C6-7, slight anterolisthesis of C4 on C5, and small ventral endplate spur formation at C4-5 and C6-7.

A report of x-rays of the cervical spine dated December 15, 2020 revealed straightening of lordosis and degenerative disease at C4-5 and C6-7.

Reports of ultrasound of the soft tissues of the cervical, thoracic, and lumbar spines dated December 10, 2021 did not identify a source of appellant's pain.

In a report dated January 4, 2021, Dr. Chi noted appellant's complaints and examination findings, and diagnosed neck pain, sprain, strain, disc bulges at C5-6 and C6-7 with spurring and anterolisthesis, and pain in the lower back and shoulders. He recommended further diagnostic studies.

A report of MRI scan of the lumbar spine dated January 12, 2021 revealed a disc bulge at L4-5 impinging upon the thecal sac.

An attending physician's report (Form CA-20) dated January 29, 2021, bearing an illegible signature, noted diagnoses of cervical, thoracic, and lumbar spine degenerative disease.

In state compensation medical forms dated February 4 and March 4, 2021, Dr. Cristy Purdue, Board-certified in anesthesiology, diagnosed cervical and lumbar radiculopathy and fibromyalgia. She checked a box marked "Yes" indicating that the December 3, 2020 employment incident was a competent cause of the diagnosed conditions.

In reports dated February 10 and March 10, 2021, Dr. Appasaheb Naik, an orthopedic surgeon, noted that appellant related complaints of neck, back, and shoulder pain, which she attributed to an MVA on December 3, 2020. He examined her and diagnosed cervical, lumbar, and bilateral shoulder sprains.

A report of x-rays of the hips dated March 10, 2021 revealed bilateral osteoarthritis. A report of x-rays of the cervical and lumbar spines dated March 12, 2021 revealed no significant changes.

In an additional state compensation medical form dated April 23, 2021, Dr. Purdue diagnosed lumbar radiculopathy and trigger points due to the December 3, 2020 employment incident.

In a follow-up report dated May 24, 2021, Dr. Naik diagnosed derangement and sprain of the cervical and lumbar spine and bilateral shoulder sprains.

In a report dated July 9, 2021, Teddy Calixte, a physician assistant, noted that appellant related complaints of neck pain, upper back pain radiating bilaterally, and lower back pain radiating to the lower extremities. He performed a physical examination and diagnosed cervical and lumbar radiculopathy and disc displacement, muscle spasm, and myalgia. Mr. Calixte opined that the diagnosed conditions were caused by the December 3, 2020 employment incident. He administered ultrasound-guided paravertebral blocks to the cervical, thoracic, and lumbar spines.

OWCP also received additional chiropractic and physical therapy reports for dates of service from January 6 and September 2, 2021 and additional Forms CA-17 by Dr. Gillman and Dr. Luna, which indicated that appellant remained unable to work due to neck and back pain throughout January and February 2021.

On December 7, 2021 appellant, through counsel, requested reconsideration of OWCP's January 22, 2021 decision. In support of the request, counsel submitted an April 27, 2021 narrative report by Dr. Chi, who diagnosed cervical radiculitis, cervical and lumbar disc syndrome, and cervical, thoracic, and lumbar myalgia and segmental dysfunction. He opined that the December 3, 2020 MVA caused these conditions. Dr. Chi noted that appellant had been unable to work due to the injuries from December 3, 2020 through March 22, 2021, and that her injuries were permanent in nature.

By decision dated March 4, 2022, OWCP denied the claim, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted December 3, 2020 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

United States within the meaning of FECA,[3] that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[8]

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[9]

[3] *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 3, 2020 employment incident.

In his April 23, 2021 narrative report, Dr. Chi opined that appellant's diagnosed conditions were caused by the accepted December 3, 2020 MVA. However, he did not explain a pathophysiological process of how the accepted employment incident caused or contributed to the conditions.[10] The Board has held that a medical opinion that does not offer a medically sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.[11] Additionally, in any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12] For these reasons, Dr. Chi's April 23, 2021 report is insufficient to meet appellant's burden of proof.

In his December 7, 2020 and January 4, 2021 reports, Dr. Chi diagnosed pain and sprains and strains of the neck, upper and middle back, and shoulders and disc bulges at C5-6 and C6-7. However, these reports did not contain an opinion as to the cause of these conditions. The Board has held that a medical report that does not render an opinion on causal relationship is of no probative value and, thus, is insufficient to establish the claim.[13] Therefore, these additional reports are also insufficient to meet appellant's burden of proof.

Similarly, Dr. Naik's medical reports and the numerous chiropractic reports and Forms CA-17 of record indicated that appellant sustained injuries to her neck and back due to the December 3, 2020 MVA. However, none of these reports or forms offered a medically-sound and rationalized explanation of how the specific employment incident physiologically caused or aggravated the diagnosed conditions. Therefore, this evidence is also of limited probative value.[14]

Dr. Purdue, in state compensation medical forms and reports dated February 4, March 4, and April 23, 2021, checked a box marked "Yes" indicating that appellant's conditions were consistent with the accepted employment incident. The Board has held that an opinion on causal

[10] *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

[11] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

[12] *R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[13] *T.D.*, Docket No. 19-1779 (issued March 9, 2021).

[14] *Supra* note 11.

relationship with an affirmative check mark, without more by way of medical rationale, is of diminished probative value.[15] Thus, this evidence is insufficient to establish causal relationship.

OWCP also received various Forms CA-17 and a Form CA-20, as outlined above, bearing illegible signatures.[16] The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[17]

Appellant also submitted various physical therapy notes and medical reports by Ms. Khaitov and Mr. Calixte, both physician assistants. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[18] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[19]

The remainder of the evidence of record consists of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.[20]

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted December 3, 2020 employment incident, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[15] *See R.H.*, Docket No. 20-1684 (issued August 27, 2021); *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

[16] 20 C.F.R. § 10.331(a) provides that, use of medical report forms is not required; however, the report should bear the physician's signature or signature stamp.

[17] *See R.C.*, Docket No. 19-0376 (issued July 15, 2019).

[18] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also supra* note 9 at Chapter 2.805.3a(1) (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[19] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk, id.*

[20] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted December 3, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 31, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board